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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-792

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, ET AL., APPELLANTS

v.

DOLORES DUBLINO, ET AL.

No. 72-802

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL., APPELLANTS

v.

DOLORES DUBLINO, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINION BELOW

The opinion of the three-judge district court (J.S. App. A)[1] is reported at 348 F. Supp. 290.

[1] "J.S." refers to the jurisdictional statement in No. 72-792.

JURISDICTION

The judgment of the district court (J.S. App. B, 41–43) was entered on August 25, 1972. An order amending the judgment (J.S. App. C) was entered on October 18, 1972. Notice of appeal was filed by appellants in No. 72–792 on September 28, 1972, and by appellants in No. 72–802 on October 5, 1972. The jurisdictional statement in No. 72–792 was filed on November 29, 1972 and in No. 72–802 on December 1, 1972. This Court on January 15, 1973, postponed the question of jurisdiction until a hearing on the merits.[2]

QUESTION PRESENTED

The United States will discuss the following question: Whether a State may, independently of the federal work incentive program, require individuals to accept employment as a condition of eligibility for federally-funded aid to families with dependent children.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Article VI, cl. 2 of the Constitution in pertinent part provides:

> This Constitution, and the laws of the United States * * * shall be the supreme Law of the Land * * *.

The pertinent provisions of Section 402(a) of the Social Security Act of 1935, 42 U.S.C. (Supp. I) 602(a), are set forth at Mot. to Aff. 3–6.

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[2] The jurisdictional question presumably arises from the fact that the jurisdictional statement in No. 72–792 was filed out of time under Rule 13 of the Rules of this Court.

Section 131(4) of the New York Social Services Law (52A McKinney's Cons. Laws § 131(4)) is set forth at J.S. 5–6.

Sections 164 and 350(k) of New York Social Services Law (52A McKinney's Cons. Laws §§ 164 and 350(k)) are set forth at J.S. App. E, 49–53.

INTEREST OF THE UNITED STATES

Pursuant to Sections 401–410 of the Social Security Act of 1935, 42 U.S.C. 601–610, the United States provides for a public assistance program of aid to families with dependent children ("AFDC"). This program is jointly financed by the states and the federal government and is administered by the individual states. A state need not participate in this program. If a state chooses to participate, it submits a plan of administration to the Secretary of Health, Education, and Welfare; if the plan satisfies the requirements of Section 402(a), the Secretary approves the plan. The federal government then provides certain matching grants-in-aid to the state.

The AFDC plan of New York requires, as a condition of eligibility, that individuals register for and accept employment. The Secretary has approved the plan as consistent with Section 402(a), and New York receives federal funds for the operation of its plan. Substantially similar plans of other states have also been approved and are in operation.

In this suit, appellees challenge New York's compliance with Section 402(a). This challenge calls into question the correctness of the Secretary's interpretation of the Act. The outcome of this case may affect

the operations of AFDC plans in many states as well as the future administration of federal assistance under the Act.

STATEMENT

Appellees, seeking declaratory and injunctive relief, brought this suit challenging the constitutionality of certain New York statutes and regulations known collectively as the New York Work Rules.[3] These Work Rules establish a presumption that certain AFDC[4] recipients are employable,[5] and they "require such recipients to report semi-monthly to the New York State Employment Service to pick up their assistance checks and accept referral to employment positions, including employment on public works projects" (J.S. App. A, 21–22). Failure to comply with the Work Rules results in termination of the AFDC benefits

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[3] The statutes involved are Sections 131(4), 164, and 350(k) of the New York Social Services Law (52A McKinney's Cons. Laws §§ 131(4), 164, 350(k)). These statutes are amplified by New York Department of Social Services Administrative Letters 71 PWD–34 and 71 PWD–43 (J.S. App. A, 34–37).

[4] The Work Rules also affect certain recipients of state welfare programs not federally assisted. The district court upheld the application of the Work Rules to those programs, and that ruling is not before the Court in this case.

[5] The Work Rules include as presumptively employable all persons between the ages of 16 and 64 except for reason of "illness or significant and substantial incapacitation * * *; full-time attendance at school in the case of a minor * * *; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children and for whom required care is not otherwise reasonably available * * *." Section 131(4) of the New York Social Services Law.

of the non-complying recipient. Section 131(4) of the New York Social Services Law.

Appellees contended, *inter alia*,[6] that the Work Rules violated Section 402(a)(10) of the Social Security Act of 1935, 42 U.S.C. 602(a)(10), and that the Work Rules were in any event pre-empted by the analogous federal work incentive program ("WIN"), contained in Sections 402(a)(19) and 430–444 of the Act.[7] The district court, relying primarily on *Carleson* v. *Remillard*, 406 U.S. 598, and *Townsend* v. *Swank*, 404 U.S. 282, concluded that any independent state condition on AFDC eligibility violates the prescription in Section 402(a)(10) that participating states (see p. 3, *supra*) must provide aid "to all eligible individuals" and that the Work Rules were therefore invalid.

The district court then compared the Work Rules with WIN, found certain differences between them, and concluded that "[t]he comprehensive intent and

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[6] Certain other constitutional challenges were rejected by the district court and are not before this Court in this case.

[7] The federal work incentive program is similar to the New York Work Rules. Section 402(a)(19) makes registration for participation in WIN a condition of eligibility for receipt of AFDC benefits. Under the program, recipients are referred to the Secretary of Labor for job training and placement; the only recipients excused from participation are children under the age of 16 and persons who are "ill, incapacitated, or of advanced age, * * * [individuals] * * * remote from a work incentive project * * *, [children] attending school full time, or * * * [individuals] whose presence in the home is required because of illness or incapacity of another member of the household [and relatives caring for children] under the age of six." Section 402(a)(19) of the Act, 42 U.S.C. (Supp. I) 602(a)(19). Compare note 5, *supra*.

language of WIN, as well as its legislative history, clearly support the proposition that, for those in the AFDC program, WIN preempts the Work Rules program" (J.S. App. A, 28).[8] The court permanently enjoined enforcement of the New York Work Rules against AFDC recipients.[9]

SUMMARY OF ARGUMENT

The issue presented by this case is whether Section 402(a)(10) of the Social Security Act of 1935, 42 U.S.C. 602(a)(10), bars a state from independently requiring individuals to accept employment as a condition of eligibility for federally-funded aid to families with dependent children. Analytically, this issue may be divided into two separate questions: (1) whether Section 402(a)(10) permits states to implement welfare policies required by the necessities of administration or designed to further basic federal and state welfare purposes, and (2) whether the enactment in 1967 of the federal work incentive pro-

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[8] The court cited no legislative history.

[9] As a matter of first impression, the propriety of this relief would appear questionable, even assuming the court to have been correct on the merits. The state AFDC plan must satisfy the requirements of Section 402(a) in order to qualify for federal funding, but the state may operate an AFDC plan without federal funding if it chooses to do so. Thus, if the state plan does not comply with Section 402(a)(10), the appropriate remedy would appear to be termination of federal funding rather than judicial rewriting of the plan. However, this Court in such cases as *Carleson* v. *Remillard*, *supra*, apparently has assumed that the Secretary's approval of a state plan imposes on the state a continuing requirement of compliance which may be enforced by a court of equity. The statutory basis for this assumption is unclear.

gram described in Section 402(a)(19) was intended entirely to displace even those state work programs which supplement, and do not conflict with, the operation of the federal program.

The historical practice and understanding under the Act have been that states may independently impose eligibility conditions, so long as those conditions do not directly contravene the congressional specification, in Sections 406 and 407, of broad categories of individuals deserving assistance. This is true both of eligibility conditions arising out of administrative necessity (*Wyman* v. *James*, 400 U.S. 309) and of those which proceed from independent state policies which are consistent with the federal programs. *Snell* v. *Wyman*, 281 F. Supp. 853 (S.D.N.Y.), affirmed, 393 U.S. 323. Pursuant to this general understanding concerning the scope of state authority to impose eligibility conditions, almost half the states have instituted AFDC work programs.

The federal work incentive program does not prevent the states from imposing supplementary work requirements. Congress has long accepted the existence of state AFDC work programs prior to 1967, and in enacting the federal WIN program it said nothing to indicate prospective disapproval of the state programs. Furthermore, WIN has not been implemented on state-wide bases, nor has it been adequately funded to serve all AFDC recipients living in the areas in which it does operate. More extensive state programs should not be deemed pre-empted by a partially developed federal program. Furthermore,

the New York work program is virtually identical in substance to WIN, and it does not apply to individuals enrolled and participating in WIN. Thus the New York Work Rules serve only to supplement, and do not interfere with, WIN. Such supplementary state work programs further the congressional interest in work incentives and should be sustained.

ARGUMENT

A STATE MAY REQUIRE INDIVIDUALS TO REGISTER FOR AND ACCEPT EMPLOYMENT AS A CONDITION OF ELIGIBILITY FOR FEDERALLY-FUNDED AID TO FAMILIES WITH DEPENDENT CHILDREN

The court below viewed this case as presenting two issues: (1) whether the New York Work Rules deny aid to "eligible individuals" within the meaning of Section 402(a)(10) of the Social Security Act, 42 U.S.C. 602(a)(10), and (2) whether state work programs have been pre-empted by the federal work incentive program described in Section 402(a)(19) of the Act. Although the federal definitional provisions of Section 406 and 407 are mandatory on the states, absent a contrary expression of congressional intent, we submit that the states have been left free to impose additional eligibility conditions unrelated to the specific federal definitions and that the Work Rules are consistent and in harmony with both the underlying purpose of AFDC assistance and the operation of the federal work incentive program.

A. THE STATES MAY IMPOSE ADDITIONAL AFDC ELIGIBILITY CONDITIONS UNRELATED TO FEDERAL REQUIREMENTS

The federal AFDC eligibility standards are set forth generally in Sections 406 and 407 of the Act. It is well established that a state AFDC plan, in order to satisfy the requirement of Section 402(a)(10), must not violate those federal standards absent contrary congressional intent "clearly evidenced from the Social Security Act or its legislative history." *Townsend* v. *Swank*, 404 U.S. 282, 286. State attempts to narrow specific federal eligibility standards have been held to violate Section 402(a)(10). See *Carleson* v. *Remillard*, 406 U.S. 598 (state attempt to narrow the federal definition of a parent's "continued absence"), *Townsend* v. *Swank*, *supra* (state attempt to narrow the federal definition relating to age and school attendance requirements for "dependent children"), and *King* v. *Smith*, 392 U.S. 309 (state attempt to narrow the federal definition of "parent"). Thus the states must look to federal law for standards determining the general class of individuals to whom the AFDC program applies as expressed in the definitional provisions of the Social Security Act.

Yet the AFDC program is administered by the states, not by the federal government, and this Court has acknowledged the right of the states to impose additional eligibility conditions required by adminis-

trative necessity or justified by underlying state welfare purposes. In *Wyman* v. *James,* 400 U.S. 309, the Court upheld a state statute making home visits by a welfare caseworker a condition of eligibility for AFDC benefits, even though, as the Court expressly noted (400 U.S. at 319), such visits are "not required by federal statute or regulation." This result was proper. In assuming the responsibility of administering the AFDC program, the states are entitled to impose requirements reasonably related to that responsibility; and the home visits, or inspections, sanctioned by *Wyman* v. *James* assist the state in determining whether applicants for AFDC in fact satisfy all applicable federal eligibility requirements.

Similarly, the states are entitled to implement important state welfare policies by imposing other eligibility conditions, so long as they do not contravene the federal policies inherent in the federal eligibility definitions. Thus a state could not, consistently with Section 402(a)(10), enforce a policy of giving aid only to families with pre-school dependent children; but a state may, for example, condition AFDC eligibility on the applicant's acceptance of an obligation to reimburse the state out of certain after-acquired assets. See *Snell* v. *Wyman,* 281 F. Supp. 853 (S.D.N.Y.), affirmed, 393 U.S. 323. Such an eligibility condition is not a matter of administrative necessity, but it does express a fundamental state judgment that limited state welfare funds should be permanently expended only on behalf of those truly in need and that self-reliance and civic responsibility are values which pub-

lic welfare programs should promote; this is consistent with the federal AFDC program, which anticipates that the states will develop potential sources of income and resources for recipients. See Section 402 (a)(7) of the Act.

Section 402(a)(10) should not be read, and has not in the past been read, to bar all eligibility conditions based on such independent state judgments. By delegating welfare administration to the states, Congress anticipated not a rigid federal program in which the states would serve a purely ministerial function, but rather a system that allows for considerable state program flexibility.

The New York Work Rules are best understood in this context. Like the reimbursement requirement upheld in *Snell* v. *Wyman*, the Work Rules express an important state policy judgment with respect to the purpose of public welfare. The considerations underlying the enactment of the Work Rules are described more fully by appellants (Br. 8–10), but the essential policy judgment, briefly stated, is that public welfare should provide employment rehabilitation as well as financial support. This judgment is consistent with the basic congressional purpose of assisting AFDC recipients "to attain or retain capability for * * * maximum self-support and personal independence * * *." 42 U.S.C. 601. And the Work Rules do not contravene the mandatory definitional provisions of the Act.

The historical understanding under the Social Security Act has been that the states may implement their individual public welfare policies in adminis-

tering federally-funded programs, so long as their policies are in harmony with expressed federal purposes and do not take the form of *de facto* amendments to the federal definitional provisions. Pursuant to this understanding, 21 states imposed welfare work requirements, as a condition of AFDC eligibility, prior to the enactment of the federal work incentive program in 1967, and these state programs were all approved by the Secretary.[10] As we will now show, nothing in the 1967 amendments to the Act was intended to invalidate these state work programs.

B. THE FEDERAL WORK INCENTIVE PROGRAM (WIN) DOES NOT BAR THE STATES FROM IMPOSING WORK REQUIREMENTS AS CONDITIONS OF ELIGIBILITY

1. WIN was not intended to displace existing State Work Programs or to inhibit development of new programs

It has been the policy of the Secretary of Health Education, and Welfare to approve state plans containing work requirements as conditions of AFDC eligibility, as long as the requirements are not arbitrary or unreasonable. The existence of such state work requirements was well known, yet Congress did nothing to cast doubt on the propriety of that consistent administrative practice. To the contrary, Congress from time to time expressed an interest in having the states encourage AFDC recipients to seek and accept employment.

[10] This information is derived from a survey of state plans conducted by the Department of Health, Education, and Welfare.

For example, in 1962 Congress established the community work and training program (see 42 U.S.C. 609), which permitted the states to make AFDC payments in the form of wages for public employment rather than as unconditional welfare benefits. In doing so, Congress recognized that participation in such a work program could be made a condition of AFDC eligibility by the states:

> If a state plan is approved, assistance could be denied if the individual refuses without good cause to take the word offered [H. Rep. No. 1414, 87th Cong., 2d Sess., at 15.]

Similarly, in extending AFDC coverage to families with unemployed parents Congress indicated that the states not only were entitled to impose work requirements but were expected to do so:

> * * * an unemployed individual whose family is receiving aid under this program should accept any reasonable offer of employment. * * * The State would determine whether the parent had good cause for refusing an offer of employment. [S. Rep. No. 165, 87th Cong., 1st Sess., at 3.]

The enactment of the federal work incentive program in 1967 should be considered in the context of this widespread and long-standing acceptance of state AFDC work requirements. By 1967, Congress had become convinced of the desirability of an AFDC work program but concerned over the suspected inadequacy of state work requirements. (At that time, only 21 states had fully developed work programs. See p. 12,

supra. Twenty-three states now have supplementary work programs.[11]) Congress therefore enacted the federal work incentive program to establish a set of minimum federal work requirements, but in doing so it expressed no intention to nullify co-existing state programs. See S. Rep. No. 744, 90th Cong., 1st Sess., at 26, 145–157; H. Rep. No. 1030, 90th Cong., 1st Sess., at 58–59. Furthermore, when Congress amended WIN in 1971, it expressed no intention of limiting or eliminating state work programs. Thus there is no evidence of a congressional design to preempt the field of AFDC work requirements, and "[t]he most plausible inference from the legislative scheme is that the Congress contemplated that state power to enact such [requirements] should remain unimpaired." *Florida Avocado Growers* v. *Paul,* 373 U.S. 132, 152.

Furthermore, the degree and manner of the implementation of the WIN program have not been consistent with the district court's theory of federal preemption. Unlike the New York Work Rules, the WIN program has not been put into effect throughout the entire state but only in selected areas, and this pattern of limited federal work program coverage is found in other states as well. Section 432(a) of the Act recognizes that WIN is not intended to be all-embracive since it requires the establishment of work incentive programs only in those state political subdivisions with the greatest need; in New York, WIN has been placed

[11] This information was supplied by the Department of Health, Education, and Welfare.

in operation in only 12 of 64 social service districts. See J.S. 15–16. The limited extent of WIN coverage can only be reconciled with the expressed congressional concern over the need for more extensive job training and employment opportunities by recognizing that WIN was not intended to be exclusive. WIN provides a basic, minimal AFDC work program which the states may, at their option, supplement and assist.

This point is further illustrated by the limited reach of WIN even in those areas where it operates. WIN has not been funded adequately to provide work assistance to all, or even to any substantial portion, of the individuals referred to the Secretary af Labor by the state. It is estimated that the current level of WIN funding is such that no more than one-fifth of the WIN registrants will receive the full job training and placement assistance contemplated by the Act.[12] Thus the great majority of WIN registrants will receive only minimal services.

In New York, for example, there are expected to be 150,000 registrants in the current fiscal year, but the Secretary of Labor has contracted with the state to provide services to only 90,000 registrants, of whom probably the majority will not receive full job training and placement assistance.[13] Congress could not have intended this partial federal program to pre-empt all state work programs. To the

[12] Compare U.S. Department of Labor, *Management Information Report*, p. 2 (June 30, 1972) with the budget of the United States, fiscal year 1974, Appendix, p. 443.

[13] U.S. Department of Labor, Manpower Administration, contract No. 36–2–0001–188, modification No. 3, June 30, 1972.

contrary, the statutory basis and the appropriations provided for WIN implementation are inconsistent with a pre-emptive legislative intent.

2. Joint enforcement of WIN and the New York Work Rules frustrates no federal purpose

The court below acknowledged that the New York Work Rules and the federal work incentive program seek "a similar end" but apparently held the Work Rules invalid because the two programs employ "different means" (J.S. App. A, 27). But "[t]o hold that a state statute identical in purpose with a federal statute is invalid under the Supremacy Clause, [a court] must * * * conclude that the purpose of the federal statute would to some extent be frustrated by the state statute." *Colorado Anti-Discrimination Commission* v. *Continental Airlines, Inc.*, 372 U.S. 714, 722. As we will now show, there is no distinction in substance between WIN and the Work Rules, they are compatible with one another, and their joint enforcement frustrates no federal purpose.

Both WIN and the Work Rules provide that AFDC benefits shall be withheld from an employable person who has refused to register for or accept employment in which he is able to engage. The state and federal criteria of employability are virtually identical. See notes 5 and 7, *supra*. The Work Rules do not apply to AFDC recipients who "are enrolled and participating in the Work Incentive Program." New York Laws of 1972, ch. 941, Section 1. Thus the Work Rules

only supplement, and do not interfere with, the operation of the federal work incentive program.

Appellees apparently attack the Work Rules on the very ground that they supplement WIN. But supplementary state work programs further the Congressional interest in work incentives. Such programs strengthen the overall system of AFDC work incentives by extending the availability of job training and placement assistance to those individuals whom WIN does not or cannot reach at its current level of funding and implementation. The fact that AFDC recipients not affected by WIN are subject to the Work Rules is evidence only of the need for and effectiveness of such supplementary state programs.

Appellees' principal remaining contention (Mot. to Aff. 25–28) seems to be that procedural or remedial differences between WIN and the Work Rules require invalidation of the latter.[14] These minor differences

[14] Appellees also contend (Mot. to Aff. 35–37) that by amending WIN in 1971 Congress acceded to the decision in *Woolfolk v. Brown*, 325 F. Supp. 1162 (E.D. Va.), affirmed *per curiam*, 456 F. 2d 652 (C.A. 4), certiorari denied, 409 U.S. 885, holding the Virginia AFDC work requirements to be pre-empted by WIN. But the appeal in *Woolfolk* was pending when Congress acted, Congress intimated no awareness of the district court judgment, and congressional acquiescence in even an intermediate appellate judgment may never be lightly inferred.

were described by the court below (J.S. App. A, 27–28): the screening procedures for determining employability are allegedly more elaborate under WIN; failure to comply with referral may be subject to a slightly longer suspension of benefits under the work rules; WIN provides counseling prior to termination for refusal to participate whereas the Work Rules do not. We see no reason why these minor differences, standing alone, should affect the validity of the Work Rules.[18]

In summary, we believe that state work programs which impede the operation of the federal work incentive program may be partially or wholly invalid but that those state programs which serve only to supplement the WIN program should be sustained. We believe Congress has permitted the states to provide work incentives for AFDC recipients who are not participating in WIN, and this is what New York has done.

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[18] Of course, the Work Rules procedures must satisfy basic due process requirements, but we see no basis in the statute for requiring state adherence to WIN procedures, whether statutory or administrative in origin. But even assuming state work programs must adopt federal procedures and remedies in their entirety, this would mean only that certain non-conforming features of the Work Rules were invalid; the validity of the Work Rules themselves would not be affected by minor procedural or remedial discrepancies.

CONCLUSION

For the foregoing reasons the judgment of the district court should be reversed.

Respectfully submitted.

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